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AMERICAN RED CROSS BLOOD
SERVICES SOUTHERN CALIFORNIA
REGION, Improperly Sued As The American
Red Cross and STEVE BROWN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN SETENCICH,

Plaintiff,

v.

THE AMERICAN RED CROSS, a non-
profit corporation, STEVE BROWN,
ROBERT BROWNING and DOES 1
through 30, inclusive,

Defendants.

Case No. C07-03688 SBA

[Honorable Sandra B. Armstrong,
Department 3]

**DEFENDANT AMERICAN RED CROSS
BLOOD SERVICES SOUTHERN
CALIFORNIA REGION'S ANSWER TO
BRIAN SETENCICH'S FIRST AMENDED
COMPLAINT**

Complaint Filed: March 13, 2007
First Amended Complaint Filed: November 8,
2007
Trial: None

Defendant American Red Cross Blood Services Southern California Region, improperly
Sued as The American Red Cross ("ARC"), answers and responds to plaintiff Brian Setencich's
("Setencich") First Amended Complaint as follows:

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1. Answering paragraph 1, because paragraph 1 is a statement regarding the relief sought by Setencich and the statutes upon which he has relied in bringing this action, ARC can neither admit nor deny the allegations of this paragraph.

2. Answering paragraph 2, ARC is informed and believes that Marc Jackson (“Jackson”), the Director of Communications and Marketing for American Red Cross Blood Services Southern California Region/West Division invited Setencich to apply for the position of Communication Manager and that, if hired, Setencich would have been working directly for Jackson. ARC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, accordingly, denies each such allegation.

3. Answering paragraph 3, ARC is informed and believes that since 1997, Jackson, along with his staff in the Communications and Marketing Department, has won national awards related to work they have performed for ARC. Except as expressly admitted or stated on information and belief, ARC denies the allegations in this paragraph.

4. Answering paragraph 4, ARC admits the allegations of this paragraph.

5. Answering paragraph 5, ARC denies the allegations of this paragraph.

6. Answering paragraph 6, ARC is informed and believes that Jackson and Setencich met in the early 1990’s. ARC is further informed and believes that Setencich made Jackson his Chief of Staff when Setencich was elected to the State Assembly in 1994. ARC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, accordingly, denies each such allegation.

7. Answering paragraph 7, ARC admits that Jackson began working for ARC in 1997. ARC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, accordingly, denies each such allegation.

8. Answering paragraph 8, ARC denies the allegations in this paragraph.

9. Answering paragraph 9, ARC lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, accordingly, denies each such allegation in this paragraph.

10. Answering paragraph 10, ARC lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, accordingly, denies each such allegation in this paragraph.

11. Answering paragraph 11, ARC denies the allegations in this paragraph.

12. Answering paragraph 12, the records maintained by the Department of Fair Employment and Housing speak for themselves.

COUNT I

ASSOCIATION DISCRIMINATION

13. ARC realleges and incorporates by reference its answers contained in paragraphs 1 through 12 of the first amended complaint.

14. Answering paragraph 14, ARC is informed and believes that Jackson invited Setencich to apply for the position of Communication Manager in or around June of 2005. ARC is also informed and believes that Setencich met with certain ARC employees. ARC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, accordingly, denies each such allegation.

15. Answering paragraph 15, ARC is informed and believes that Jackson met with certain ARC employees. Except as stated on information and belief, ARC denies the allegations in this paragraph.

16. Answering paragraph 16, ARC denies the allegations of this paragraph.

17. Answering paragraph 17, ARC denies the allegations of this paragraph.

18. Answering paragraph 18, ARC denies the allegations in this paragraph.

19. Answering paragraph 19, ARC denies the allegations in this paragraph.

20. Answering paragraph 20, ARC denies the allegations in this paragraph.

21. Answering paragraph 21, ARC denies the allegations in this paragraph.

22. Answering paragraph 22, ARC denies the allegations in this paragraph.

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COUNT II

FRAUD

23. ARC realleges and incorporates by reference its answers contained in paragraph 1 through 22 of the first amended complaint.

24. Answering paragraph 24, pursuant to the Court's Order dated February 14, 2008, the claim for Fraud has been dismissed as to all defendants.

25. Answering paragraph 25, pursuant to the Court's Order dated February 14, 2008, the claim for Fraud has been dismissed as to all defendants.

26. Answering paragraph 26, pursuant to the Court's Order dated February 14, 2008, the claim for Fraud has been dismissed as to all defendants.

27. Answering paragraph 27, pursuant to the Court's Order dated February 14, 2008, the claim for Fraud has been dismissed as to all defendants.

28. Answering paragraph 28, pursuant to the Court's Order dated February 14, 2008, the claim for Fraud has been dismissed as to all defendants.

29. Answering paragraph 29, pursuant to the Court's Order dated February 14, 2008, the claim for Fraud has been dismissed as to all defendants.

30. Answering paragraph 30, pursuant to the Court's Order dated February 14, 2008, the claim for Fraud has been dismissed as to all defendants.

COUNT III

NEGLIGENT MISREPRESENTATION

31. ARC realleges and incorporates by reference its answers contained in paragraphs 1 through 30 of the first amended complaint.

32. Answering paragraph 32, ARC denies the allegations in this paragraph.

33. Answering paragraph 33, ARC denies the allegations in this paragraph.

34. Answering paragraph 34, ARC denies the allegations in this paragraph.

35. Answering paragraph 35, ARC denies the allegations in this paragraph.

36. Answering paragraph 36, ARC denies the allegations in this paragraph.

37. ARC alleges the following as affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

38. Setencich's claims are barred by his failure to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(No Grounds for Punitive Damages)

39. ARC is not guilty of malice, fraud or oppression against Setencich, and therefore, he is not entitled to punitive damages.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

40. If Setencich has suffered any injuries as alleged in the first amended complaint or otherwise, which ARC denies, then Setencich has failed to take reasonable steps to mitigate his alleged damages and any recovery in this action should be reduced to the extent that he failed to mitigate his damages.

FOURTH AFFIRMATIVE DEFENSE

(No Justifiable Reliance)

41. Setencich's causes of action based on alleged misrepresentation by ARC are barred because Setencich could not have justifiably or reasonably relied thereon.

FIFTH AFFIRMATIVE DEFENSE

(No Emotional Distress Damages)

42. ARC's actions with respect to Setencich was neither extreme nor outrageous, and therefore, Setencich is not entitled to damages for emotional distress

SIXTH AFFIRMATIVE DEFENSE

(No Misrepresentation of Fact)

43. Setencich's causes of action based on alleged misrepresentations by ARC are barred because ARC did not make any misrepresentation of fact.

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SEVENTH AFFIRMATIVE DEFENSE

(Proper Exercise of Employer's Discretion)

44. Any and all conduct of which Setencich complains and which is attributed to ARC was a just and proper exercise of management discretion on the part of ARC, undertaken for an honest, proper reason and regulated by good faith under the circumstances then existing.

EIGHTH AFFIRMATIVE DEFENSE

(Business Necessity)

45. Any and all conduct of which Setencich complains and which is attributed to ARC was accomplished for and conducted due to legitimate and good faith business necessity.

NINTH AFFIRMATIVE DEFENSE

(Statutes of Limitation)

46. The First Amended Complaint, and each and every purported cause of action alleged therein, is barred by the applicable statutes of limitations, including those set forth in California Code of Civil Procedure Sections 337, 338, 339 or 340 and Government Code Sections 129609 and 12965(b).

TENTH AFFIRMATIVE DEFENSE

(Reservation of Further Defenses)

47. ARC hereby reserves the right to amend this pleading to include further affirmative defenses.

WHEREFORE, prays for judgment as follows:

1. That Setencich takes nothing by reason of the first amended complaint;
2. That Setencich's first amended complaint be dismissed with prejudice;
3. That judgment be rendered in favor of ARC;
4. That ARC be awarded costs of suit;
5. That ARC be awarded reasonable attorneys' fees; and

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6. For such other and further relief as this Court may deem just and proper.

Dated: March 26, 2008

BAKER & HOSTETLER LLP

/s/ Sabrina L. Shadi

RONALD J. KLEPETAR

SABRINA L. SHADI

Attorneys for Defendants

AMERICAN RED CROSS BLOOD
SERVICES SOUTHERN CALIFORNIA

REGION and STEVE BROWN

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

PROOF OF SERVICE

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 12100 Wilshire Boulevard, 15th Floor, Los Angeles, California 90025-7120. On March 26, 2008, I served a copy of the within document(s): **DEFENDANT AMERICAN RED CROSS BLOOD SERVICES SOUTHERN CALIFORNIA REGION'S ANSWER TO BRIAN SETENCICH'S FIRST AMENDED COMPLAINT**

- ☒ via electronic mail by the U.S. District Court – Live System.
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Jill P. Telfer, Esq.
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on March 26, 2008, at Los Angeles, California.

/s/ Charlene E. Stamps

CHARLENE E. STAMPS